IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1297 OF 2004
IN
APPEAL FROM ORDER NO. 945 OF 2004

Pujya Sane Guruji Swayamsevi
Seva Sangh. .. Applicant

Vs

1. State of Maharashtra and ors. .. Respondents

Mr. S.M. Railkar for the applicant.
Ms. G.P. Mulekar, AGP for Respondent Nos.1 and 2.

CORAM: B.H. MARLAPALLE, J.

Date : August 08, 2005.

P.C.:

1. Heard Mr. Railkar the learned counsel for the applicant and Ms. Mulekar, the learned AGP for Respondent Nos.1 and 2. Perused the affidavit in reply filed by the District Superintending Agricultural Officer, Ratnagiri and the documents annexed thereto.

2. A.O. No.945 of 2004, in which the order passed by the learned Civil Judge, Senior Division dated 6/8/2004 rejecting the application for temporary injunction filed in Regular Civil Suit No.319 of 2002

has been challenged, came to be admitted by this court on 14/3/2005. This Civil Application has been filed praying for stay to the communication dated 26/11/2002 (Exhibit - H) and by the said communication the applicant was called upon to pay an amount of Rs.19,83,765/-. The said letter is subject matter of challenge in the pending suit. This Court by order dated 14/3/2005 has granted ad-interim relief by way of stay to the recovery proceedings and there is no stay to the trial of the suit. On filing reply by the respondents the Rule granted in this application came up for hearing from time to time and, therefore, while deciding this civil application it is necessary to consider whether the ad-interim order is required to be confirmed or the prayer for stay is required to be rejected or any other alternative relief could be granted so as to protect the interest of both the parties.

3. The learned counsel for the applicant submitted that before the recovery notice was issued principles of natural justice were not followed and at no point of time the Institution was aware of the

survey or inquiry conducted, on the basis of which the recovery claim was made. It claims that it was taken by surprise when the recovery notice was received. On the other hand the affidavit in reply shows that the SDAO, Dapoli, District Ratnagiri conducted an inquiry and submitted a report on 13/9/2002. There were earlier reports dated 21/5/2002 and 24/4/2002. The SDAO had also carried out surveys on 4/3/2002 and 3/4/2002. Copies of these survey reports were also forwarded to the applicant Institution. In the report dated 13/9/2002 submitted by the SDAO, Dapoli, the estimated misappropriation is calculated at Rs.19,83,765/- and the same was placed before the Director of Soil Conservation and Water Shed Management, Pune, who, in turn, placed the same before the State Government vide his letter dated 22/10/2002. The Chief Executive Officer Zilla Parishad, Ratnagiri was in turn directed to cause recovery.

4. The applicant was entrusted the work under Ideal Village Scheme and it appears that one of the leading Marathi newspapers, namely, ‘The Maharashtra Times’ published an article on 16/5/2002. Similarly

Advocate Balasaheb Belose, resident of Palgad where the applicant Institution was entrusted the development work also submitted a letter dated 4/7/2002 and requested for an inquiry into the working of the development activities entrusted to the applicant.

5. The applicant-plaintiff has chosen to challenge the recovery by filing Regular Civil Suit No.319 of 2002 and the veracity of the inquiry report as well as the survey reports etc. would be tested in the said proceedings. The amount of recovery sought to be made and which is the subject matter of the suit is certainly public money and, therefore, there cannot be unconditional stay to such recoveries as has been well established in law. If the plaintiff seeks a stay to the recovery proceedings during the pendency of the suit, the interest of the State exchequer must be protected and, therefore, the ad-interim order passed earlier cannot be continued unconditionally.

6. In the premises, the Civil Application is

allowed in terms of prayer clause (a) subject to the plaintiff either furnishing security of a Nationalised Bank in respect of the suit amount or depositing the said amount with the court below. This deposit or Bank Guarantee shall be subject to the final outcome in the suit. The time for furnishing Bank Guarantee or to make the deposit shall be four weeks from today. If the plaintiff deposits the amount instead of furnishing Bank Guarantee, the said amount shall be invested in a fixed deposit with the Nationalised Bank for a period of six months. The trial of the pending suit is expedited and it is further directed that the suit shall be heard and decided preferably by 31st March, 2006. Writ to go to the court below forthwith.

(B.H. Marlapalle,J.)